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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,298	03/31/2004	Michael F. Fink	NXGE-10242	7317
54434	7590	12/20/2005	EXAMINER	
BOOTH UDALL, PLC 1423 S. HIGLEY ROAD SUITE 110 MESA, AZ 85206			MAUST, TIMOTHY LEWIS	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/815,298

Applicant(s)

FINK, MICHAEL F.

Examiner

Timothy L. Maust

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 63-76 and 78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 63-76 and 78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 63, 65-69, 71 and 73-76 are rejected under 35 U.S.C. 102(b) as being anticipated by Headley.

In regard to claims 63 and 65, the reference discloses a “pressurized container” 24 comprising a “hollow vessel” 40, a “chamber” 42, a “pressurized gas” (i.e., inert gas), an “aluminum housing member” 60 defining a “outlets” 68 and having an “integral closure” (80 and 100) and an “initiator” 120, as claimed.

In regard to claims 66-68, 71 and 73-75, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product in the prior art, the claim is unpatentable even if the prior product was made by a different process (see MPEP 2113).

In regard to claims 69 and 76, see “support portion” (defined by retention chamber 102) in Figures 2-5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 64, 70 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headley in view of Butt et al.

The Headley reference discloses the invention substantially as claimed, but does not disclose a “projectile” and “cold gas” initiator. However, the Butt et al. reference discloses another inflator that uses an initiator 46 having a “projectile” 50 and a “cold gas” to fluidly connect the chamber and outlet. Therefore, it would have been obvious to one of ordinary skill in the art to substitute a cold gas, projectile initiator for the gas initiator on the Headley device as, for example, taught by Butt et al. wherein so doing would amount to mere substitution of one functional equivalent initiator for another within the same art and the selection of any of these initiators would work equally well in the Headley device.

Claims 65 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headley.

The Headley reference discloses the invention substantially as claimed, but does not disclose the aluminum material being designated as 7075-T6. However, it would

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have been obvious to one having ordinary skill in the art at the time the invention was made to make the device of a high strength aluminum, such as 7075-T6, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

*In re Leshin*, 125 USPQ 416

### ***Response to Arguments***

Applicant's arguments with respect to claims 63-76 and 78 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Tue. - Thur. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust  
Primary Examiner  
Art Unit 3751

Tlm  
12/14/05